



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

**[RTID 0648-XC709]**

#### **Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to SouthCoast Wind Energy, LLC's Marine Site Characterization Surveys off Massachusetts and Rhode Island**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; proposed issuance of an Incidental Harassment Authorization (IHA); request for comments.

**SUMMARY:** NMFS has received a request from SouthCoast Wind Energy, LLC (SouthCoast Wind; formerly known as Mayflower Wind Energy, LLC) for authorization to take marine mammals incidental to marine site characterization surveys offshore of Massachusetts and Rhode Island in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Area (OCS)-A-0521. The activities described in SouthCoast Wind's request, the overall survey duration, the project location, and the acoustic sources proposed for use are similar in scope as to what was previously analyzed in support of the IHA issued by NMFS to SouthCoast Wind for the 2021-2022 site characterization surveys (2021 IHA) (86 FR 38033, July 19, 2021). All proposed mitigation, monitoring, and reporting requirements remain the same. While SouthCoast Wind's planned activity would qualify for renewal of the 2021 IHA, due to the availability of updated marine mammal density data (<https://seamap.env.duke.edu/models/Duke/EC/>), which NMFS has determined represents the best available scientific data, NMFS has determined it appropriate to provide a 30-day period for the public to comment on this proposed action. Pursuant to the Marine

Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible 1-year renewal IHA that could be issued under certain circumstances and if all requirements are met, as described in **Request for Public Comments** at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

**DATES:** Comments and information must be received no later than [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Potlock@noaa.gov*.

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments, including all attachments, must not exceed a 25-megabyte file size.

Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA(s)), as well as a list of the

references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

### **National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notification prior to concluding our NEPA process or making a final decision on the IHA request.

### **History of Request**

On October 23, 2020, NMFS received a request from SouthCoast Wind seeking authorization to take of marine mammals incidental to high-resolution geophysical site characterization surveys (HRG) off Massachusetts and Rhode Island in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Area OCS-A 0521. Within this request, the applicant had requested authorization to harass (by Level B harassment only) up to 14 species of marine mammals (comprising 13 cetacean species and 1 collective pinniped guild). NMFS published notice of the proposed IHA in the **Federal Register** on March 1, 2021 (86 FR 11930). Following publication of the proposed IHA notice, SouthCoast Wind adjusted the proposed survey routes and submitted a modified IHA application to NMFS on April 19, 2021. Based on this modified application, an updated notice of proposed IHA was published in the **Federal Register** on May 20, 2021 (86 FR 27393). NMFS

subsequently issued an IHA that was effective for a period of one year, from July 1, 2021 through June 30, 2022 (86 FR 38033; July 19, 2021). SouthCoast Wind submitted a marine mammal monitoring report and complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous IHA. Information regarding their monitoring results has been taken into consideration for the **Estimated Take** section. This monitoring report can be found on NMFS' website:

*<https://www.fisheries.noaa.gov/action/incidental-take-authorization-mayflower-wind-energy-llc-marine-site-characterization-0>*.

On November 16, 2022, SouthCoast Wind submitted an application for a renewal IHA in order to complete the remaining subset of the planned survey activity that could not be completed under the 2021 IHA. This request is for take of a small numbers of 15 species of marine mammals, (comprising 13 cetacean and 2 pinniped species), by Level B harassment only. Neither SouthCoast Wind, nor NMFS expect serious injury or mortality to result from this activity. Take by Level A harassment (injury) is considered unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use.

Since Duke University's Marine Geospatial Ecology Laboratory (*<https://seamap.env.duke.edu/models/Duke/EC/>*) finalized updated marine mammal density information on June 20, 2022 for all species NMFS determined that IHA renewal is not appropriate in this circumstance. However, given that the activity would otherwise qualify for a renewal of the initial IHA, *i.e.*, the scope of the activities, the survey location, the acoustic source use, and the level of impact expected to occur (*i.e.*, Level B harassment only) remain the same, NMFS relies substantially herein on the information previously presented in notices associated with issuance of the initial IHA. (86 FR 11930, March 1, 2021; 86 FR 27393, May 20, 2021; 86 FR 38033, July 19, 2021). Following additional discussions with NMFS, SouthCoast Wind submitted an updated request for a

standard IHA on January 13, 2023 rather than a renewal IHA. The updated application was deemed adequate and complete on January 24, 2023.

SouthCoast Wind's current request covers the same activities (using the same sound sources), in the same location, and the mitigation, monitoring, and reporting requirements are unchanged. The only changes are that the total number of survey days have been reduced, the number of vessels performing survey activities have been reduced, reduction in the assumed survey distance per day, and a reduction in total survey trackline as described in greater detail below.

## **Description of the Proposed Activity**

### *Overview*

SouthCoast Wind proposes to conduct geotechnical and high-resolution geophysical (HRG) surveys in the Lease Area OCS-A 0521 and along potential submarine export cable routes (ECRs) to landfall locations in Falmouth, Massachusetts and Narragansett Bay, Rhode Island. The purpose of the proposed surveys are to acquire high resolution geophysical (HRG) and geotechnical data on the bathymetry, seafloor morphology, subsurface geology, environmental/biological sites, seafloor obstructions, soil conditions, and locations of any man-made, historical or archaeological resources within the Lease Area and along the proposed ECR corridor. Three survey vessels may operate concurrently as part of the proposed surveys running at a maximum speed of 3 to 4 knots (3.5 to 4.6 miles per hour). Additionally, a shallow-water vessel may survey the nearshore areas of the project location, but this would only occur during daylight hours and for a maximum of 12-hours daily. Underwater sound resulting from SouthCoast Wind's proposed activities, specifically the HRG surveys, have the potential to result in incidental take of marine mammals in the form of behavioral harassment (*i.e.*, Level B harassment). SouthCoast is requesting issuance of an IHA authorizing the take, by Level B harassment only, of 15 species of marine mammals incidental to marine site

characterization surveys, specifically in association with the use of HRG survey equipment.

#### *Dates and Duration*

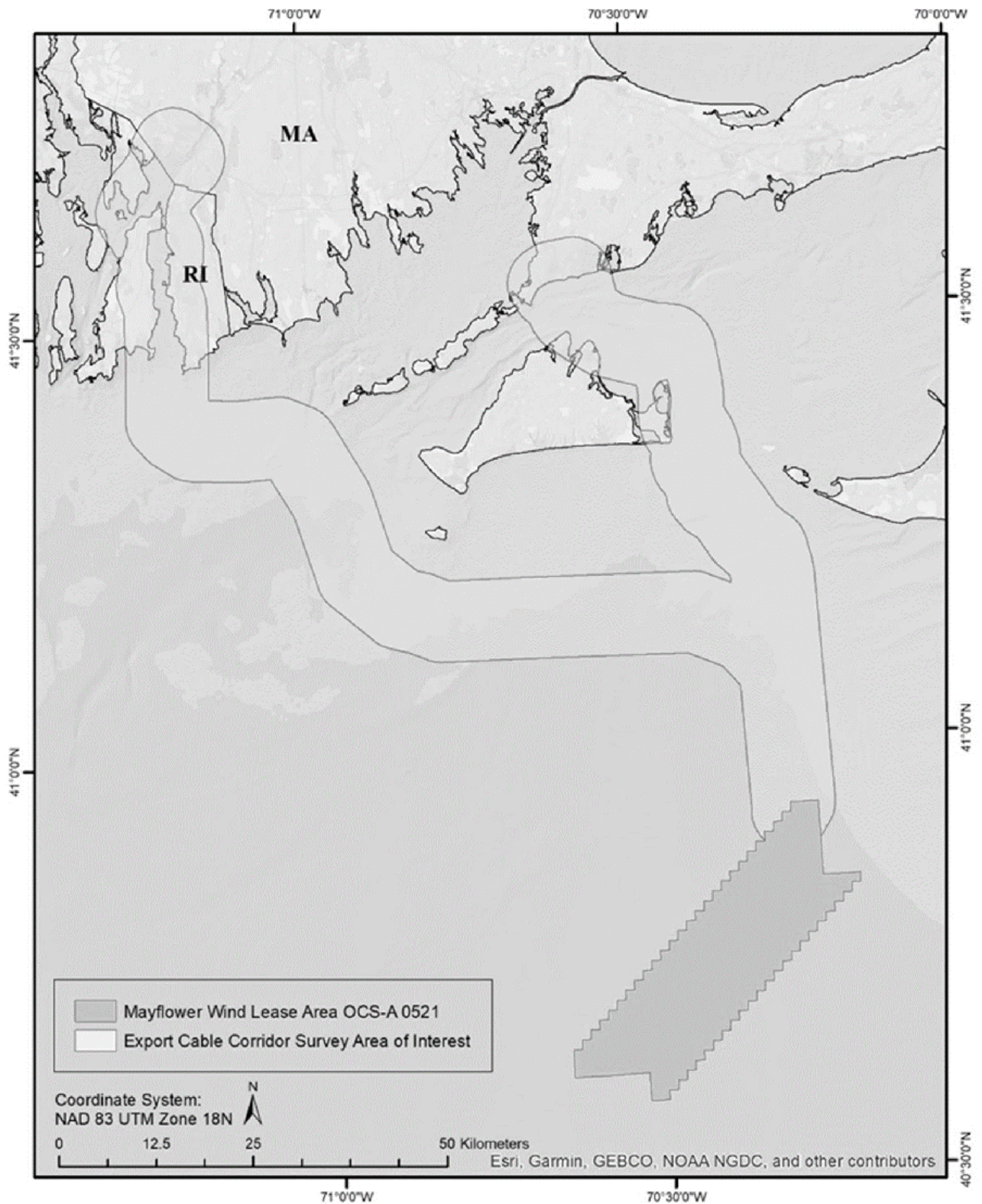
The estimated duration of the planned HRG survey activity is 114 total survey days over the course of a year (Table 1). As multiple vessels (*i.e.*, two survey vessels and a shallow-water vessel) may be operating concurrently across the proposed project area, each day that a single survey vessel is operating counts as a single survey day. For example, if two vessels are operating with one in a single export cable route and one in the Lease Area, concurrently, this would count as two survey days. SouthCoast Wind's survey schedule is based on 24-hours of operations throughout 12 months. The schedule presented here for this proposed project has accounted for potential down time due to inclement weather or other project-related delays.

**Table 1. Number of Survey Days that SouthCoast Wind Plans to Perform the Described HRG Survey Activities**

Survey Location	Number of Days of Active Acoustic Source Use
Lease Area	39
Export Cable Routes	75
Total Number of Days	114

#### *Specific Geographic Region*

SouthCoast Wind's proposed activities would occur in the Northwest Atlantic Ocean within Federal and state waters off Massachusetts and Rhode Island (see Figure 1). Surveys would occur in the Lease Area and potential ECRs to landfall locations in Falmouth, Massachusetts and Narragansett Bay, Rhode Island in and around OCS-A-0521. The survey area is the same as that previously described in the application for the 2021 IHA (86 FR 27393, May 20, 2021; 86 FR 38033, July 19, 2021), consisting of approximately 127,388 acres (515.5 square kilometers (km<sup>2</sup>)) and extends approximately 20 nautical miles (nm; 23.6 miles (mi); 38 kilometers (km)) offshore. Water depths in the Lease Area are approximately 38-62 meters (m).



**Figure 1. Map of the Proposed Survey Areas By SouthCoast Wind Energy, LLC**

#### *Detailed Description of the Action*

A detailed description of the proposed survey activities can be found in the previous **Federal Register** notices and documents associated with the initial issued IHA



(86 FR 27393, May 20, 2021; 86 FR 38033, July 19, 2021). The survey location (the full area of OCS-A-0521, the ECRs, and some of the surrounding area) and the nature of the activities that could cause take of marine mammals (high-resolution geophysical surveys), including the types of acoustic sources planned for use (boomers, sparkers, and CHIRPs), are identical to those described in the previous notices for the 2021 IHA. Differences include a reduction in planned survey effort (114 survey days versus 471 survey days in the prior survey plan), a reduced number of active vessels surveying concurrently (up to three vessels versus four vessels for the prior survey), reduction in assumed survey distance per day (50 km per day in the Lease Area (versus 80 km in the previous survey) and 20 km per day in the ECRs (versus 15-60 km per day in the previous survey, depending on water depth in the ECR)), and a reduction in total survey trackline (3,450 km versus the 15,350 from the previous surveys). Of the total survey trackline for this proposed IHA, 1,950 km would occur in the Lease Area and 1,500 km in the ECRs. Please see the previous notices for a detailed description of the planned survey activity (86 FR 27393, May 20, 2021; 86 FR 38033, July 19, 2021).

Geotechnical surveys are planned to occur and would consist of the same activities previously described by SouthCoast Wind in its application for the 2021 IHA (86 FR 11930, March 1, 2021; 86 FR 27393, May 20, 2021; 86 FR 38033, July 19, 2021; *i.e.*, vibracores, seabed cone penetration tests (CPTs), and boreholes). Consistent with NMFS' previous analysis of these activities, no take of marine mammals is expected to occur as a result of geotechnical survey activities. As a result, these activities will not be discussed further herein.

#### *Description of Marine Mammals*

A description of the marine mammals in the area of the activities, which remains applicable to this proposed IHA, can be found in the previous documents and notices for the 2021 IHA (86 FR 27393, May 20, 2021; 86 FR 38033, July 19, 2021). In addition,

Atlantic spotted dolphin (*Stenella frontalis*), for which take was not previously authorized based on the analysis supporting issuance of SouthCoast Wind’s 2021 IHA, is addressed in this notice. For this species, other IHA-holders performing HRG surveys in the region have recorded observations of this species (see the 2019-2020 monitoring report for the Orsted Wind Power North America, LLC project off New York to Massachusetts on NMFS’ website). SouthCoast Wind’s use of the new density data (Roberts and Halpin, 2022) also produces estimated exposures greater than zero for the species, which differs from the previous analysis supporting the 2021 IHA which did not include authorized takes for Atlantic spotted dolphin. Previously available density information indicated that the species are typically found further south than the Project Area (86 FR 11930, March 1, 2021).

For all other marine mammal species likely to be found within the project area and upon reviewing the most recent Stock Assessment Reports (draft 2022 U.S. Atlantic and Gulf of Mexico Marine Mammal SAR; available on NMFS’ website at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>), up-to-date information on any relevant Unusual Mortality Events (UMEs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events>), and recent scientific literature, NMFS has determined that no new information affects the original analysis supporting issuance of the 2021 IHA. This information is available in Table 2.

**Table 2. Marine Mammals Likely To Occur in the Project Area That May Be Affected by SouthCoast Wind 's Proposed Activity**

Common Name	Scientific Name	Stock	ESA/MMPA status; strategic (Y/N) <sup>1</sup>	Stock abundance (CV, N <sub>min</sub> , most recent abundance survey) <sup>2</sup>	PBR <sup>3</sup>	Annual M/SI <sup>3</sup>
<i>Order Artiodactyla – Cetacea – Mysticeti (baleen whales)</i>						
<i>Family Balaenidae</i>						
North Atlantic Right Whale	<i>Eubalaena glacialis</i>	Western North Atlantic	E, D, Y	338 (0, 332, 2020)	0.7	8.1

Family Balaenopteridae (rorquals)						
Fin Whale	<i>Balaenoptera physalus</i>	Western North Atlantic	E, D, Y	6,802 (0.24; 5,573; 2016)	11	1.8
Humpback Whale	<i>Megaptera novaeangliae</i>	Gulf of Maine	-, -, Y	1,396 (0; 1,380; 2016)	22	12.15
Minke Whale	<i>Balaenoptera acutorostrata</i>	Canadian Eastern Coastal	-, -, N	21,968 (0.31; 17,002; 2016)	170	10.6
Sei Whale	<i>Balaenoptera borealis</i>	Nova Scotia	E, D, Y	6,292 (1.02; 3,098; 2016)	6.2	0.8
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae						
Sperm Whale	<i>Physeter macrocephalus</i>	North Atlantic	E, D, Y	4,349 (0.28; 3451; 2016)	3.9	0
Family Delphinidae						
Atlantic Spotted Dolphin	<i>Stenella frontalis</i>	Western North Atlantic	-, -, N	39,921 (0.27; 32,032; 2016)	320	0
Atlantic White-Sided Dolphin	<i>Lagenorhynchus acutus</i>	Western North Atlantic	-, -, N	93,233 (0.71; 54,443; 2016)	544	27
Bottlenose Dolphin	<i>Tursiops truncatus</i>	Western North Atlantic - Offshore	-, -, N	62,851 b (0.23; 51,914; 2016)	519	28
Long-Finned Pilot Whale	<i>Globicephala melas</i>	Western North Atlantic	-, -, N	39,215 (0.3; 30,627; 2016)	306	29
Risso's Dolphin	<i>Grampus griseus</i>	Western North Atlantic	-, -, N	35,215 (0.19; 30,051; 2016)	301	34
Common Dolphin	<i>Delphinus delphis</i>	Western North Atlantic	-, -, N	172,947 (0.21; 145,216; 2016)	1452	390
Family Phocoenidae (porpoises)						
Harbor Porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/ Bay of Fundy	-, -, N	95,543 (0.31; 74,034; 2016)	851	164
Order Carnivora – Pinnipedia						
Family Phocidae (earless seals)						
Gray Seal <sup>4</sup>	<i>Halichoerus grypus</i>	Western North Atlantic	-, -, N	27,300 (0.22; 22,785; 2016)	1389	4453
Harbor Seal	<i>Phoca vitulina</i>	Western North Atlantic	-, -, N	61,336 (0.08; 57,637; 2018)	1729	339

1 - ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

2 - NMFS marine mammal stock assessment reports online at: [www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments](http://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments). CV is the coefficient of variation;  $N_{\min}$  is the minimum estimate of stock abundance. In some cases, CV is not applicable.

3 - These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike).

4 - NMFS' gray seal stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 450,000. The annual mortality and serious injury (M/SI) value given is for the total stock.

#### *Potential Effects on Marine Mammals and their Habitat*

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the initial IHA (86 FR 11930, March 1, 2021; 86 FR 27393, May 20, 2021; 86 FR 38033, July 19, 2021). At present, there is no new information on potential effects that would impact our analysis.

#### *Estimated Take*

A detailed description of the acoustic sources planned for use and the methods used to estimate take anticipated to occur incidental to the project is found in the previous **Federal Register** notices (86 FR 11930, March 1, 2021; 86 FR 27393, May 20, 2021; 86 FR 38033, July 19, 2021). The acoustic sources that may result in take, as well as the associated source levels, estimated isopleth distances to the 160 dB Level B harassment threshold (maximum of 141 m), resulting estimated ensonified areas, and the methods of take estimation, including the use of group size adjustments and Protected Species Observer (PSO) data, remain applicable to this proposed authorization and are unchanged from those described for the 2021 IHA. Therefore, this information is not repeated here and we refer the reader to the previous notices for detailed descriptions (86 FR 27393, May 20, 2021; 86 FR 38033, July 19, 2021). The only exception to this is the incorporation of newly updated density information (Roberts *et al.*, 2016; Roberts and Halpin, 2022), available online at: <https://seamap.env.duke.edu/>. We refer the reader to Tables 1 and 2 in the ITA Request from SouthCoast Wind for specific density values used in the analysis, as found on our website

(<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take->

*authorizations-other-energy-activities-renewable).*

The take that NMFS proposes for authorization can be found below in Table 3. Table 3 presents the results of SouthCoast's density-based calculations, estimated potential take numbers based on observational data presented in region-specific PSO reports, and mean group sizes from both NMFS' Atlantic Marine Assessment Program for Protected Species (AMAPPS) survey data and references presented by SouthCoast in its application. The largest value for each species, across these sources, is proposed for authorization. For comparative purposes, we have provided the take that was previously authorized in the 2021 IHA (86 FR 38033, July 19, 2021). NMFS notes that take by Level A harassment was not requested, nor does NMFS anticipate that it could occur. Therefore, NMFS has not proposed to authorize any take by Level A harassment. No mortality or serious injury is anticipated to occur or proposed for authorization.

**Table 3. Total Estimated Take, By Level B Harassment Only, Relative To Population Size For SouthCoast Wind's Proposed 2023 HRG Surveys**

Marine Mammal Species	Scientific Name	Stock	Estimated Population	Total Density-based Calculated Take	PSO Data Take Estimate	Mean Group Size		Take Authorized Under Previous 2021 IHA	Proposed 2023 IHA	
						SouthCoast Wind	AMAPPS		Take Proposed For Authorization	Percentage of Stock Abundance
Mysticetes										
Fin Whale	<i>Balaenoptera physalus</i>	Western North Atlantic	6,802	3.0	6.5	1.8	1.25	6	7	0.1
Humpback Whale	<i>Megaptera novaeangliae</i>	Gulf of Maine	1,396	2.3	55.3	2.0	1.6	33	55	3.94
Minke Whale	<i>Balaenoptera acutorostrata</i>	Canadian Eastern Coastal	21,968	12.9	12.1	1.2	1.12	14	13	0.06
North Atlantic Right Whale	<i>Eubalaena glacialis</i>	Western North Atlantic	338	5.5	0.2	2.4	1.58	9	6	1.78
Sei Whale	<i>Balaenoptera borealis</i>	Nova Scotia	6,292	1.3	1.0	1.6	1.21	6	2	0.03
Odontocetes										
Atlantic Spotted Dolphin	<i>Stenella frontalis</i>	Western North Atlantic	39,921	3.5	-	29	24.2	<i>n/a</i> <sup>a</sup>	29	0.07
Atlantic White-sided Dolphin	<i>Lagenorhynchus acutus</i>	Western North Atlantic	93,233	24.4	-	27.9	12.2	57	28	0.03
Bottlenose Dolphin	<i>Tursiops truncatus</i>	Western North Atlantic - Offshore	62,851	12.8	151.9	7.8	9.9	536	152	0.24
Common Dolphin	<i>Delphinus delphis</i>	Western North Atlantic	172,947	198.8	2,093.7	34.9	30.2	1,969	2,094	1.21
Harbor Porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/ Bay of Fundy	95,543	83.2	0.2	2.7	2.5	46	83	0.09
Long-finned Pilot Whale	<i>Globicephala melas</i>	Western North Atlantic	39,215	1.7	4.4	8.4	8.2	27	8	0.02

Risso's Dolphin	<i>Grampus griseus</i>	Western North Atlantic	35,215	2.0	-	5.4	7.3	18	7	0.01
Sperm Whale	<i>Physeter macrocephalus</i>	N Atlantic	4,349	0.9	0.3	1.5	1.7	6	2	0.04
Pinnipeds										
Harbor Seal	<i>Phoca vitulina</i>	Western North Atlantic	61,336	74.2	2.3	1.4	<i>n/a</i> <sup>c</sup>	<i>n/a</i> <sup>b</sup>	74	0.12
Gray Seal	<i>Halichoerus grypus</i>	Western North Atlantic	27,300 <sup>d</sup>	166.7	38.7	1.4	<i>n/a</i> <sup>c</sup>	<i>n/a</i> <sup>b</sup>	167	0.04 <sup>d</sup>

a – No takes for this species were authorized in the 2021 IHA (86 FR 38033, July 19, 2021).

b – In the 2021 IHA (86 FR 38033, July 19, 2021), both seal species were combined into a single guild of 718 total authorized takes.

c – No AMAPPS data was available for seals.

d – NMFS' stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,600. This value was used in the percentage of stock abundance estimated to be taken by the proposed project.

### *Description of Proposed Mitigation, Monitoring and Reporting Measures*

The proposed mitigation, monitoring, and reporting measures are similar to those described in the **Federal Register** notice announcing issuance of the 2021 IHA (86 FR 38033, July 19, 2021; with the exception discussed below), and the discussion of the least practicable adverse impact included in that document remains accurate.

Following issuance of the 2021 IHA to SouthCoast Wind, NMFS' Greater Atlantic Regional Fisheries Office (GARFO) concluded a programmatic informal consultation regarding wind energy development-related surveys conducted in three Atlantic Renewable Energy Regions (<https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation>). Therefore, in addition to the mitigation, monitoring, and reporting measures prescribed through the 2021 IHA, SouthCoast Wind would be required to adhere to relevant Project Design Criteria (PDC) described in the GARFO consultation document (specifically PDCs 4, 5, and 7). The following measures are proposed for inclusion in this IHA:

#### **Visual Monitoring and Shutdown Zones**

NMFS-approved visual observers must be used. During survey operations (*e.g.*, any day on which use of the sparker source is planned to occur, and whenever the sparker source is in the water, whether activated or not), a minimum of one visual marine mammal observer (*i.e.*, PSO) must be on duty on each source vessel and conducting visual observations at all times during daylight hours (*i.e.*, from 30 minutes prior to sunrise through 30 minutes following sunset). A minimum of two PSOs must be on duty on each source vessel during nighttime hours. Visual monitoring must begin no less than 30 minutes prior to ramp-up (described below) and must continue until one hour after use of the sparker source ceases.

Visual PSOs shall coordinate to ensure 360° visual coverage around each vessel



from the most appropriate observation posts and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs shall establish and monitor applicable shutdown zones (see below). These zones shall be based upon the radial distance from the sparker source (rather than being based around the vessel itself).

Two shutdown zones are defined, depending on the species and context. Here, an extended shutdown zone encompassing the area at and below the sea surface out to a radius of 500 meters from the sparker source (0–500 meters) is defined for North Atlantic right whales. For all other marine mammals, the shutdown zone encompasses a standard distance of 100 meters (0-100 meters). Any observations of marine mammals by crew members aboard any vessel associated with the survey shall be relayed to the PSO team.

Visual PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period.

#### Pre-Start Clearance and Ramp-up

A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the sparker source when technically feasible. Operators should ramp up sparkers to half power for 5 minutes and then proceed to full power. A 30-minute pre-start clearance observation period must occur prior to the start of ramp-up. The intent of pre-start clearance observation (30 minutes) is to ensure no marine mammals are within the shutdown zones prior to the beginning of ramp-up. The intent of ramp-up is to warn marine mammals of pending operations and to allow sufficient time for those animals to leave the immediate vicinity. All operators must adhere to the following pre-start clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60

minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the shutdown zones for 30 minutes prior to the initiation of ramp-up (pre-start clearance). During this 30 minute pre-start clearance period the entire shutdown zone must be visible, except as indicated below.

- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated.
- A visual PSO conducting pre-start clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed.
- Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zone.
- The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that mitigation commands are conveyed swiftly while allowing PSOs to maintain watch.
- The pre-start clearance requirement is waived for small delphinids and pinnipeds. Detection of a small delphinid (individual belonging to the following genera of the Family Delphinidae: *Steno*, *Delphinus*, *Lagenorhynchus*, *Stenella*, and *Tursiops*) or pinniped within the shutdown zone does not preclude beginning of ramp-up, unless the PSO confirms the individual to be of a genus other than those listed, in which case normal pre-clearance requirements apply.
- If there is uncertainty regarding identification of a marine mammal species (*i.e.*, whether the observed marine mammal(s) belongs to one of the delphinid genera for which the pre-clearance requirement is waived), PSOs must use best professional judgment in making the decision to call for a shutdown.
- Ramp-up must not be initiated if any marine mammal to which the prestart clearance requirement applies is within the shutdown zone. If a marine mammal is

observed within the shutdown zone during the 30 minute pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (30 minutes for all baleen whale species and sperm whales and 15 minutes for all other species).

- PSOs must monitor the shutdown zones 30 minutes before and during ramp-up, and ramp-up must cease and the source must be shut down upon observation of a marine mammal within the applicable shutdown zone.

- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 minutes prior to beginning ramp-up. Sparker activation may only occur at night where operational planning cannot reasonably avoid such circumstances.

- If the acoustic source is shut down for brief periods (*i.e.*, less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.*, mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of marine mammals have occurred within the applicable shutdown zone. For any longer shutdown, pre-start clearance observation and ramp-up are required.

## Shutdown

All operators must adhere to the following shutdown requirements:

- Any PSO on duty has the authority to call for shutdown of the sparker source if a marine mammal is detected within the applicable shutdown zone.
- The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch.
- When the sparker source is active and a marine mammal appears within or enters the applicable shutdown zone, the source must be shut down. When shutdown is

instructed by a PSO, the source must be immediately deactivated and any dispute resolved only following deactivation.

- The shutdown requirement is waived for small delphinids and pinnipeds.

If a small delphinid (individual belonging to the following genera of the Family Delphinidae: *Steno*, *Delphinus*, *Lagenorhynchus*, *Stenella*, and *Tursiops*) or pinniped is visually detected within the shutdown zone, no shutdown is required unless the PSO confirms the individual to be of a genus other than those listed, in which case a shutdown is required.

- If there is uncertainty regarding identification of a marine mammal species (*i.e.*, whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger shutdown zone), PSOs must use best professional judgment in making the decision to call for a shutdown.

- Upon implementation of shutdown, the source may be reactivated after the marine mammal has been observed exiting the applicable shutdown zone or following a clearance period (30 minutes for all baleen whale species and sperm whales and 15 minutes for all other species) with no further detection of the marine mammal.

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone, shutdown would occur.

#### Vessel Strike Avoidance

Crew and supply vessel personnel should use an appropriate reference guide that includes identifying information on all marine mammals that may be encountered. Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would

create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

- Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures should always be exercised. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (species-specific distances detailed below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.*, PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to: (1) distinguish marine mammal from other phenomena and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammals.

- All vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes. These include all Seasonal Management Areas (SMA) (when in effect), any dynamic management areas (DMA) (when in effect), and Slow Zones. See [www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-shipstrikes-north-atlantic-right-whales](http://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-shipstrikes-north-atlantic-right-whales) for specific detail regarding these areas.

- Vessel speeds must also be reduced to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.

- All vessels must maintain a minimum separation distance of 500 m from right whales. If a right whale is sighted within the relevant separation distance, the vessel must steer a course away at 10 knots or less until the 500-m separation distance has been established. If a whale is observed but cannot be confirmed as a species other than a right

whale, the vessel operator must assume that it is a right whale and take appropriate action.

- All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.*, for animals that approach the vessel).
- When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.*, attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area, reduce speed and shift the engine to neutral). This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Members of the PSO team will consult NMFS' North Atlantic right whale reporting system and Whale Alert, daily and as able, for the presence of North Atlantic right whales throughout survey operations, and for the establishment of DMAs and/or Slow Zones. It is SouthCoast Wind's responsibility to maintain awareness of the establishment and location of any such areas and to abide by these requirements accordingly.

SouthCoast Wind must use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammal and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course for geophysical surveys. Visual

monitoring must be performed by qualified, NMFS-approved PSOs. PSO resumes must be provided to NMFS for review and approval prior to the start of survey activities.

PSO names must be provided to NMFS by the operator for review and confirmation of their approval for specific roles prior to commencement of the survey. For prospective PSOs not previously approved, or for PSOs whose approval is not current, NMFS must review and approve PSO qualifications. Resumes should include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training.

NMFS may approve PSOs as conditional or unconditional. A conditionally approved PSO may be one who is trained but has not yet attained the requisite experience. An unconditionally-approved PSO is one who has attained the necessary experience. For unconditional approval, the PSO must have a minimum of 90 days at sea performing the role during a geophysical survey, with the conclusion of the most recent relevant experience not more than 18 months previous.

At least one of the visual PSOs aboard the vessel must be unconditionally approved. One unconditionally-approved visual PSO shall be designated as the lead for the entire PSO team. This lead should typically be the PSO with the most experience, who would coordinate duty schedules and roles for the PSO team and serve as primary point of contact for the vessel operator. To the maximum extent practicable, the duty schedule shall be planned such that unconditionally-approved PSOs are on duty with conditionally-approved PSOs

PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

PSOs must have successfully attained a bachelor's degree from an accredited

college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; and (3) previous work experience as a PSO (PSO must be in good standing and demonstrate good performance of PSO duties).

SouthCoast Wind must work with the selected third-party PSO provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals, and to ensure that PSOs are capable of calibrating equipment as necessary for accurate distance estimates and species identification. Such equipment, at a minimum, shall include:

- At least one thermal (infrared) image device suited for the marine environment;
- Reticle binoculars (*e.g.*, 7 x 50) of appropriate quality (at least one per PSO, plus backups);
- Global Positioning Units (GPS) (at least one plus backups);
- Digital cameras with a telephoto lens that is at least 300-mm or equivalent on a full-frame single lens reflex (SLR) (at least one plus backups). The camera or lens should also have an image stabilization system;
- Equipment necessary for accurate measurement of distances to marine mammal;



- Compasses (at least one plus backups);
- Means of communication among vessel crew and PSOs; and
- Any other tools deemed necessary to adequately and effectively perform

PSO tasks.

The equipment specified above may be provided by an individual PSO, the third-party PSO provider, or the operator, but SouthCoast Wind is responsible for ensuring PSOs have the proper equipment required to perform the duties specified in the IHA.

The PSOs will be responsible for monitoring the waters surrounding the survey vessel to the farthest extent permitted by sighting conditions, including shutdown zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established shutdown zones during survey activities. It will be the responsibility of the PSO(s) on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to shutdown zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology must be available for use. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.*, daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs should also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew

members aboard the vessel associated with the survey would be relayed to the PSO team. Data on all PSO observations would be recorded based on standard PSO collection requirements (see *Proposed Reporting Measures*). This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.*, species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.*, noted behavioral disturbances).

SouthCoast Wind shall submit a draft summary report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammals sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced, timestamped vessel tracklines for all time periods during which acoustic sources were operating. Tracklines should include points recording any change in acoustic source status (*e.g.*, when the sources began operating, when they were turned off, or when they changed operational status such as from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize the information. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *nmfs.gar.incidental-take@noaa.gov*.

PSOs must use standardized electronic data forms to record data. PSOs shall record detailed information about any implementation of mitigation requirements,

including the distance of marine mammal to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

1. Vessel name (source vessel), vessel size and type, maximum speed capability of vessel;
2. Dates of departures and returns to port with port name;
3. PSO names and affiliations;
4. Date and participants of PSO briefings;
5. Visual monitoring equipment used;
6. PSO location on vessel and height of observation location above water surface;
7. Dates and times (Greenwich Mean Time) of survey on/off effort and times corresponding with PSO on/off effort;
8. Vessel location (decimal degrees) when survey effort begins and ends and vessel location at beginning and end of visual PSO duty shifts;
9. Vessel location at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval;
10. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any change;
11. Water depth (if obtainable from data collection software);
12. Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to

the horizon;

13. Factors that may contribute to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.*, vessel traffic, equipment malfunctions).

14. Survey activity information (and changes thereof), such as acoustic source power output while in operation, number and volume of airguns operating in an array, tow depth of an acoustic source, and any other notes of significance (*i.e.*, pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.).

15. Upon visual observation of any marine mammal, the following information must be recorded:

- a. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- b. Vessel/survey activity at time of sighting (*e.g.*, deploying, recovering, testing, shooting, data acquisition, other);
- c. PSO who sighted the animal;
- d. Time of sighting;
- e. Initial detection method;
- f. Sightings cue;
- g. Vessel location at time of sighting (decimal degrees);
- h. Direction of vessel's travel (compass direction);
- i. Speed of the vessel(s) from which the observation was made;
- j. Identification of the animal (*e.g.*, genus/species, lowest possible taxonomic level or unidentified); also note the composition of the group if there is a mix of species;
- k. Species reliability (an indicator of confidence in identification);

- l. Estimated distance to the animal and method of estimating distance; m. Estimated number of animals (high/low/best);
- m. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
- n. Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars, or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- o. Detailed behavior observations (*e.g.*, number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior before and after point of closest approach);
- p. Mitigation actions; description of any actions implemented in response to the sighting (*e.g.*, delays, shutdowns, ramp-up, speed or course alteration, etc.) and time and location of the action;
- q. Equipment operating during sighting;
- r. Animal's closest point of approach and/or closest distance from the center point of the acoustic source; and
- s. Description of any actions implemented in response to the sighting (*e.g.*, delays, shutdown, ramp-up) and time and location of the action.

If a North Atlantic right whale is observed at any time by PSOs or personnel on the project vessel, during surveys or during vessel transit, SouthCoast Wind must report the sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System (866-755-6622) within 2 hours of occurrence, when practicable, or no later than 24 hours after occurrence. North Atlantic right whale sightings in any location may also be reported to the U.S. Coast Guard via channel 16 and through the WhaleAlert app ([www.whalealert.org](http://www.whalealert.org)).

In the event that personnel involved in the survey activities discover an injured or dead marine mammal, the incident must be reported to NMFS as soon as feasible by phone (866-755-6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*). The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
2. Species identification (if known) or description of the animal(s) involved;
3. Condition of the animal(s) (including carcass condition if the animal is dead);
4. Observed behaviors of the animal(s), if alive;
5. If available, photographs or video footage of the animal(s); and,
6. General circumstances under which the animal was discovered

In the event of a ship strike of a marine mammal by any vessel involved in the activities, SouthCoast Wind must report the incident to NMFS by phone (866-755-6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report must include the following information:

1. Time, date, and location (latitude/longitude) of the incident;
2. Species identification (if known) or description of the animal(s) involved;
3. Vessel's speed during and leading up to the incident;
4. Vessel's course/heading and what operations were being conducted (if applicable);
5. Status of all sound sources in use;
6. Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
7. Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea

state, cloud cover, visibility) immediately preceding the strike;

8. Estimated size and length of animal that was struck;
9. Description of the behavior of the marine mammal immediately preceding and/or following the strike;
10. If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
11. Estimated fate of the animal (*e.g.*, dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and,
12. To the extent practicable, photographs or video footage of the animal(s).

### **Preliminary Determinations**

SouthCoast Wind's HRG survey activities are unchanged from those analyzed in support of the 2021 IHA, with the exception of reductions in survey effort and vessels. The effects of the activity, taking into consideration the proposed mitigation and related monitoring measures, remain unchanged from those evaluated in support of the 2021 IHA, regardless of the minor increases in estimated take numbers for some marine mammal species and/or stocks. Specifically, only Level B harassment is proposed for authorization, which NMFS expects would be of a lower severity, predominately in the form of avoidance of the sound sources that may cause a temporary abandonment of the location during active source use that may result in a temporary interruption of foraging activities for some species. However, NMFS does not expect that this effect will long-term or permanent as the acoustic source would be mobile and leave the area within a specific amount of time for which the animals could return to the area. Even considering the increased estimated take for some species, the impacts of these lower severity exposures are not expected to accrue to a degree that the fitness of any individuals would be impacted, and therefore, no impacts on the annual rates of recruitment or survival would result.

As discussed in the previous **Federal Register** notices (86 FR 27393, May 20, 2021; 86 FR 38033, July 19, 2021), SouthCoast Wind's project would occur approximately 50 miles (80.5 km) west of the feeding BIAs for North Atlantic right whales (February – April) and sei whales (May-November) and approximately 40 miles west of feeding BIAs for humpback whales (March – December) and fin whales (March – October). The Narragansett Bay cable route corridor is located just to the north of another fin whale BIA (March-October) south of Martha's Vineyard. These BIAs are extensive and sufficiently large (705 km<sup>2</sup> and 3,149 km<sup>2</sup> for North Atlantic right whales; 47,701 km<sup>2</sup> for humpback whales; 2,933 km<sup>2</sup> for fin whales; and 56,609 km<sup>2</sup> for sei whales), and the acoustic footprint of the planned survey is sufficiently small (141 m using the sparker), such that feeding opportunities for these whales would not be reduced appreciably. Furthermore, given SouthCoast Wind's reduced vessel presence, the reduced daily vessel tracks, and the reduced number of days for the project, NMFS expects any impacts from this project to be less than were expected in association with the previous 2021-2022 project.

NMFS has also reviewed current information regarding active UMEs and important habitat, and finds that the discussion provided for the 2021 IHA remains applicable to this proposed IHA. Therefore, in conclusion, there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has preliminarily determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the proposed authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) SouthCoast Wind's activities will not have an unmitigable adverse impact on taking for subsistence purposes



as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate monitoring and reporting requirements are included.

### **Endangered Species Act (ESA)**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS Office of Protected Resources (OPR) consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS OPR is proposing to authorize the incidental take of five species of marine mammals which are listed under the ESA, including the North Atlantic right, blue, fin, sei, and sperm whale, and has determined that this activity falls within the scope of activities analyzed in NMFS GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

### **Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to issue an IHA to SouthCoast Wind for conducting HRG surveys off Massachusetts and Rhode Island in and around OCS-A-0521, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

### **Request for Public Comments**

We request comment on our analyses (included in both this document and the referenced documents supporting the 2021 IHA (86 FR 11930, March 1, 2021; 86 FR

27393, May 20, 2021; 86 FR 38033, July 19, 2021)), this proposed authorization, and any other aspect of this notice of proposed IHA for the proposed site characterization surveys. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the **Description of the Proposed Activity and Anticipated Impacts** section of this notice is planned or (2) the activities as described in the **Description of the Proposed Activity and Anticipated Impacts** section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:
  - (1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: March 2, 2023.

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Kimberly Damon-Randall,  
Director, Office of Protected Resources,  
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